

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

# LAKWOOD SHORES HOMEOWNERS ASSOCIATION.

Plaintiff,

V.

**CONTINENTAL CASUALTY  
COMPANY, et al.,**

## Defendants.

CASE NO. C18-1353MJP

ORDER DENYING MOTION FOR  
RECONSIDERATION

THIS MATTER comes before the Court on Defendants Indian Harbor Insurance Company (“Indian Harbor”) and Certain Underwriters at Lloyd’s, London (“Underwriters”) for Reconsideration. (Dkt. No. 30.) Having reviewed the Motion, the Response (Dkt. 31), the Reply (Dkt. No. 36) and the related record, the Court DENIES the Motion for Reconsideration. The Court GRANTS the Motion to Strike the Declaration of Thomas Lether. (Dkt. No. 33.) The Court declines to hear oral argument on the matter.

1      **I. Motion to Strike**

2              Indian Harbor and Underwriters move to strike the Declaration of Thomas Lether, which  
3              purports to provide an expert opinion as to the effect of suit limitation provisions in the insurance  
4              industry and is offered by Lakewood Shores in response to the Motion for Reconsideration.

5              (Dkt. No. 33.) While the declaration might otherwise be admissible as an expert opinion, the  
6              Court will not consider it in the context of the Motion for Reconsideration, as it is not a type of  
7              evidence “which could not have been brought to its attention earlier with reasonable diligence.”  
8              LCR 7(h)(1). The Motion to Strike is GRANTED.

9      **I. Motion for Reconsideration**

10              Motions for reconsideration are disfavored and ordinarily will not be granted “in the  
11              absence of a showing of manifest error in the prior ruling or a showing of new facts or legal  
12              authority which could not have been brought to its attention earlier with reasonable diligence.”  
13              LCR 7(h)(1). While Indian Harbor and Underwriters contend that the Court erred in denying  
14              their Motion to Dismiss on the grounds that the suit limitation clause does not negate coverage  
15              nor extinguish the their obligation to conduct an investigation (Dkt. No. 28 at 6), they cite the  
16              same cases and repeat the same arguments the Court previously considered and rejected.

17              To the extent that Indian Harbor and Underwriters attempt to rely upon Schaeffer v.  
18 Farmers Ins. Exch., 111 Wn. App. 1018, 2002 WL 662889 (2002),<sup>1</sup> and Hampton v. Allstate  
19 Corp., Case No. C13-0541JLR, 2014 WL 1569239 (W.D. Wash. Apr. 18, 2014), neither supports  
20              their position nor provides grounds for reconsideration. In Schaeffer, the Washington Court of  
21              Appeals held that the policy’s one-year suit limitation clause did *not* bar the insured’s extra-

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23              <sup>1</sup> The Court notes that Schaeffer is an unpublished opinion with no precedential value. See  
24              Wash. Gen. R. 14.1.

1 contractual claims as a matter of law because “[t]he insurer’s duty of good faith and fair dealing  
2 arises not just from the contract, but from an independent source.” 2002 WL 662889 at \*4.  
3 There, the insurer “investigated the . . . claim and denied coverage” and the insured “failed to  
4 submit sufficient evidence to raise a genuine issue of material fact as to whether it was harmed  
5 by [the insurer’s] alleged bad faith.” Id. at \*5.

6 Similarly, in Hampton, the court found that, where the only admissible evidence of harm  
7 resulting from the insurer’s failure to investigate a claim consisted of “the costs associated with  
8 retaining the expert witness” in the litigation, the insurer was entitled to summary judgment with  
9 respect to the insured’s CPA claim. 2014 WL 1569239 at \*9. The court noted that while “expert  
10 witness fees and other [litigation] expenses” were not cognizable injuries under the CPA,  
11 “investigative expenses due to [an insurer’s] failure to investigate” could be. Id.

12 In other words, neither Schaeffer nor Hampton held that a policy’s suit-limitation clause  
13 eliminates an insurer’s obligation to investigate a time-barred claim, nor that an insured can  
14 *never* maintain a bad faith claim where an insurer fails to do so. Moreover, both cases were  
15 decided at the summary judgment stage, after discovery had been taken and the insureds had  
16 failed to produce substantive evidence of harm. While discovery may ultimately reveal that  
17 Lakewood Shores was similarly not harmed by Indian Harbor or Underwriters’ failure to  
18 investigate their claim, its extra-contractual claims are not foreclosed as a matter of law and  
19 dismissal at this stage would be premature.

20 Because Indian Harbor and Underwriters have failed to show manifest error in the  
21 Court’s previous order or to raise any evidence which compels a different result, the Motion for  
22 Reconsideration is DENIED.

1 The clerk is ordered to provide copies of this order to all counsel.

2 Dated January 23, 2019.

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5 Marsha J. Pechman  
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7 United States District Judge  
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